

DEC 07 2015

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

| | | | |
|--------------------------------|---|--------------------|------------------|
| In re: |) | BAP No. | CC-14-1446-KuFKi |
| |) | | |
| LAVESTA M. LOCKLIN, |) | Bk. No. | 13-24951 |
| |) | | |
| Debtor. |) | | |
| _____ |) | | |
| |) | | |
| RELIANCE STEEL & ALUMINUM CO., |) | | |
| |) | | |
| Appellant, |) | | |
| |) | | |
| v. |) | MEMORANDUM* | |
| |) | | |
| LAVESTA M. LOCKLIN, |) | | |
| |) | | |
| Appellee. |) | | |
| _____ |) | | |

Argued and Submitted on October 22, 2015
at Los Angeles, California

Filed - December 7, 2015

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Mark D. Houle, Bankruptcy Judge, Presiding

Appearances: Robert P. Goe of Goe & Forsythe, LLP argued for
appellee LaVesta M. Locklin.**

Before: KURTZ, FARIS and KIRSCHER, Bankruptcy Judges.

*This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8024-1.

**Counsel for appellant Reliance Steel & Aluminum Co. did
not appear for oral argument, so appellant's position was deemed
submitted on its appeal briefs and on the appellate record.

1 **INTRODUCTION**

2 Reliance Steel & Aluminum Co. appeals from an order
3 disallowing the claim it filed in LaVesta Locklin's chapter 11¹
4 bankruptcy case. In disallowing the claim, the bankruptcy court
5 held that no evidentiary hearing was required under Rule 9014(d)
6 because Reliance's papers responding to Locklin's claim objection
7 did not include any evidence demonstrating that there was a
8 disputed material factual issue requiring resolution at an
9 evidentiary hearing.

10 We disagree with the bankruptcy court. Reliance's properly
11 filed proof of claim constituted prima facie evidence of the
12 validity of Reliance's claim, including the allegations contained
13 therein contending that Locklin was the alter ego of her wholly
14 owned corporation Nightscaping, Inc. When these allegations are
15 considered in conjunction with the opposing evidence Locklin
16 presented with her claim objection, they establish that there was
17 a disputed issue of material fact regarding the alter ego issue.
18 Therefore, the bankruptcy court abused its discretion when it
19 denied Reliance's request for an evidentiary hearing.

20 Therefore, we must VACATE the bankruptcy court's claim
21 disallowance order and REMAND for further proceedings.

22 **FACTS**

23 In February 2014, Reliance filed a proof of claim for
24 \$17,205.58 in Locklin's bankruptcy case. Reliance did not
25

26 ¹Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure. All "Civil Rule" references are to the Federal Rules
of Civil Procedure.

1 include with its proof of claim any documentation and did not
2 explain the basis for its claim, other than to state that the
3 claim was for "goods and services." Locklin filed an objection
4 to that claim, which the bankruptcy court sustained with leave to
5 amend.²

6 On June 10, 2014, Reliance filed its amended proof of claim.
7 This time, Reliance included enough documentation and explanation
8 with its proof of claim that the basis for its claim was
9 apparent. Reliance's claim against Locklin allegedly arose from
10 a credit arrangement between Reliance on the one hand and
11 Locklin's wholly-owned corporations Nightscaping, Inc. and Loran,
12 Inc. on the other hand.³ Pursuant to this credit arrangement,
13 Reliance supplied to Nightscaping, on credit, stainless steel
14 sheeting. Reliance effectively acknowledged in its amended proof
15 of claim that Locklin was not directly liable for Nightscaping's
16 trade debt. Instead, Reliance alleged that Locklin was
17 Nightscaping's alter ego.

18 In support of its alter ego allegation, Reliance included in
19 its proof of claim numerous conclusory, boilerplate statements
20

21 ²Reliance did not include in its excerpts of record a copy
22 of its February 2014 proof of claim, nor did it include copies of
23 Locklin's March 2014 claim objection, or the bankruptcy court's
24 June 2014 order sustaining that objection with leave to amend.
25 We have obtained copies of these documents by accessing the
26 bankruptcy court's electronic docket. We can and do take
judicial notice of the docket and the imaged documents attached
thereto. Goldstein v. Stahl (In re Goldstein), 526 B.R. 13, 17
(9th Cir. BAP 2015).

27 ³For purposes of this appeal, there is no material
28 difference between Nightscaping and Loran. For ease of
reference, both are jointly referred to herein as Nightscaping.

1 that, if proven, might have supported alter ego liability against
2 Locklin under California law. See CADC/RAD Venture 2011-1 LLC v.
3 Bradley, 235 Cal. App. 4th 775, 788-89 (2015), review denied,
4 (July 8, 2015) (generally describing circumstances that might
5 lead to a finding of alter ego liability). As set forth in the
6 proof of claim, Reliance alleged as follows:

7 On information and belief, some or all of the following
8 facts and factors for alter ego liability exist to
9 impose individual liability on Lavesta Locklin for that
[sic] acts and omissions of Nightscaping and Loran:

- 10 a. The business is inadequately capitalized,
- 11 b. The business is operated by Locklin as if it
is herself,
- 12 c. The business fails to observe corporate
13 formalities,
- 14 d. There is a commingling of funds and other
assets,
- 15 e. There is the holding out by one entity that
16 it is liable for the debts of the other,
- 17 f. The corporation is a mere shell or conduit
for the affairs of the individual,
- 18 g. There is identical ownership, management, and
19 control, where the corporation is completely
owned, managed, and controlled by the
20 individual,
- 21 h. The use of the corporation as a mere shell,
22 instrumentality or conduit for a single
venture or the business of the individual,
- 23 i. The individual using the corporation's income
24 and assets and resources to pay herself large
amounts of compensation, while failing to pay
the legitimate creditors of the corporation,
- 25 j. The use of the corporate entity to procure
26 labor, services or merchandise for the
individual,
- 27 k. The diversion of assets from the corporation
28 by or to a stockholder or other person or
entity, to the detriment of creditors, or the

1 manipulation of assets and liabilities
2 between entities and individuals so as to
3 concentrate the assets in one and the
4 liabilities in another,

- 5 1. The contracting with another with intent to
6 avoid performance by use of a corporate
7 entity as a shield against personal
8 liability, or the use of a corporation as a
9 subterfuge of illegal transactions,
- 10 m. The use of a corporation to avoid personal
11 liability, while the individual takes the
12 income and value from the corporation to have
13 a luxurious personal lifestyle, while failing
14 to pay creditors, who should be entitled to
15 pursue the assets and value into the
16 individual rather than being limited to
17 pursuing the corporation,
- 18 n. Incurring debts far beyond the ability to
19 pay, purportedly only as corporate
20 liabilities, and then declaring bankruptcy to
21 discharge those debts to creditors, while
22 maintaining a luxurious individual lifestyle.

23 Amended Proof of Claim (June 10, 2014) at pp. 5-6.

24 On July 8, 2014, Locklin filed her objection to Reliance's
25 amended proof of claim ("Second Claim Objection"). The Second
26 Claim Objection focused on and attacked Reliance's alter ego
27 allegations. Locklin supported her Second Claim Objection with
28 declarations and exhibits. Her declaration told a much different
story than that suggested by Reliance's alter ego allegations.
Locklin explained that her husband founded Nightscaping in 1963
and successfully designed, manufactured and sold landscape
lighting products through Nightscaping for decades. When her
husband passed away in 2007, she became the sole owner of
Nightscaping. Thereafter, Nightscaping's business quickly and
significantly deteriorated, with revenues falling by 70% in 2008
and by 80% in 2009. As Locklin puts it, between 2009 and 2011,
she invested over \$1.7 million of her own personal funds in

1 Nightscaping in an attempt to turn around operations, but all of
2 this investment capital was consumed as a result of poor business
3 planning and management.

4 As a result, in June 2011, she hired a professional senior
5 management team in an attempt, once again, to turn around
6 Nightscaping. According to Locklin, once she hired the
7 management team, she was not involved in Nightscaping's day-to-
8 day operations. She further asserted that she invested in
9 Nightscaping another \$1.2 million in 2011 and 2012. Again in
10 2013, Locklin claims that she invested further funds in an
11 attempt to keep Nightscaping's doors open while the management
12 team negotiated a sale of the business as a going concern to a
13 third party for \$3 million, but that sale fell through as a
14 result of the third party's inability to obtain financing.
15 Because she had borrowed funds to make many of her capital
16 investments in Nightscaping, Locklin explained that she ended up
17 heavily indebted and ultimately was forced to file her personal
18 chapter 11 bankruptcy petition.

19 The Second Claim Objection also included the declaration of
20 Nightscaping's chief executive officer Richard Henninger - one of
21 the members of Nightscaping's turnaround management team.
22 Henninger explained that, as chief executive officer, he was in
23 possession of Nightscaping's books and records, and that, in
24 2014, he searched those records for all transactions between
25 Nightscaping and Reliance. According to Henninger, those records
26 reflected that, between 2006 and 2012, Nightscaping received
27 95 invoices for credit purchases from Reliance and that
28 Nightscaping fully paid 94 of those 95 invoices. Furthermore,

1 Henninger corroborated Locklin's testimony that she had no
2 involvement in Nightscaping's day-to-day operations in 2012 and
3 that, at the time Nightscaping made the 2012 purchase from which
4 Reliance's claim arose, Locklin had no responsibility for making
5 purchasing decisions on behalf of Nightscaping and had no reason
6 to even know about individual purchasing decisions.

7 Henninger further opined that Nightscaping's 2012 credit
8 purchase from Reliance was made in good faith and in the ordinary
9 course of Nightscaping's business and that Nightscaping, at the
10 time, was in the process of implementing its turnaround business
11 plan, which was aimed at selling the business as a going concern.
12 Finally, Henninger maintained that, during his entire tenure as
13 chief executive officer, Nightscaping complied with all corporate
14 formalities.

15 Reliance filed a response to the Second Claim Objection, but
16 the response was quite brief and did not include any evidence.
17 The entire response consisted of four short paragraphs, in which
18 Reliance merely asserted that, at the upcoming hearing on the
19 Second Claim Objection, the bankruptcy court should set a
20 schedule for discovery, briefing and an evidentiary hearing in
21 light of the fact that the Second Claim Objection involved a
22 disputed material issue of fact, namely whether Locklin was
23 Nightscaping's alter ego.

24 At the hearing on the Second Claim Objection, the bankruptcy
25 court disagreed with Reliance. The court held that, because
26 Locklin had presented evidence tending to refute Reliance's alter
27 ego allegations and because Reliance had not submitted any
28 evidence in support of its alter ego allegations, there was no

1 material factual issue, so no evidentiary hearing was necessary.
2 Rather, according to the court, Reliance had been obligated under
3 the court's local rules to provide evidence in support of its
4 claim contemporaneously with its opposition to the Second Claim
5 Objection, and because of Reliance's failure to include any such
6 evidence on the alter ego issue, Locklin's Second Claim Objection
7 would be sustained and Reliance's claim would be disallowed.

8 The bankruptcy court entered an order disallowing Reliance's
9 amended claim on August 29, 2014, and Reliance timely appealed
10 the claim disallowance order.

11 Locklin had included in her Second Claim Objection a request
12 for attorney's fees, which the bankruptcy court denied without
13 prejudice. After Reliance filed its notice of appeal, Locklin
14 filed a motion for attorney's fees as the prevailing party on its
15 Second Claim Objection. After briefing and a hearing, the
16 bankruptcy court entered an order on December 5, 2014, granting
17 Locklin's attorney's fees motion. Reliance did not timely file a
18 notice of appeal from the fees order. Eventually, on January 7,
19 2015, Reliance filed a "Supplemental" notice of appeal, in which
20 it requested appellate review of the fees order as part of its
21 appeal from the claim disallowance order.

22 JURISDICTION

23 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
24 §§ 1334 and 157(b)(2)(B). Except as otherwise noted below, we
25 have jurisdiction under 28 U.S.C. § 158.

26 ISSUES

- 27 1. Was the appeal from the order awarding attorney's fees
28 timely filed?

- 1 2. Is the appeal from the order disallowing Reliance's amended
2 proof of claim moot?
- 3 3. Did the bankruptcy court commit reversible error when it
4 disallowed Reliance's amended proof of claim?

5 **STANDARDS OF REVIEW**

6 We have an independent duty to examine our jurisdiction, and
7 we review jurisdictional issues de novo. Couch v. Telescope,
8 Inc., 611 F.3d 629, 632 (9th Cir. 2010); Wolkowitz v. Beverly
9 (In re Beverly), 374 B.R. 221, 230 (9th Cir. BAP 2007), aff'd in
10 part, dismissed in part, 551 F.3d 1092 (9th Cir. 2008).

11 Orders resolving claims objections can raise both legal
12 issues and factual issues. We review the legal issues de novo
13 and the factual issues under the clearly erroneous standard. See
14 Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal), 450 B.R.
15 897, 918 (9th Cir. BAP 2011).

16 The bankruptcy court's decision not to conduct an
17 evidentiary hearing is reviewed for an abuse of discretion.
18 Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 636 (9th Cir.
19 BAP 2010), partially abrogated on other grounds by, Law v.
20 Siegel, 134 S. Ct. 1188, 1196-98 (2014). The bankruptcy court
21 abused its discretion if it incorrectly construed or applied the
22 law or its factual findings were clearly erroneous. United
23 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

24 **DISCUSSION**

25 **A. Timeliness Issue re Appeal From Attorney's Fees Order**

26 A timely-filed notice of appeal is mandatory and
27 jurisdictional. Browder v. Dir., Dep't of Corr. of Ill.,
28 434 U.S. 257, 264 (1978); Hunt v. City of Los Angeles, 638 F.3d

1 703, 719 (9th Cir. 2011). When the appellant fails to timely
2 file a notice of appeal from a post-judgment order awarding
3 attorney's fees, the appellate court lacks jurisdiction to review
4 the fees order. Id.; Farley v. Henderson, 883 F.2d 709, 712 (9th
5 Cir. 1989) (citing Culinary & Serv. Employees Union, Local 555 v.
6 Haw. Employee Benefit Admin., 688 F.2d 1228, 1232 (9th Cir.
7 1982)).

8 Here, Reliance's January 7, 2015 supplemental notice of
9 appeal was untimely. The bankruptcy court entered its fee order
10 on December 5, 2014, and pursuant to Rule 8002(a)(1), the last
11 day to timely file a notice of appeal therefrom was December 19,
12 2014. Reliance argues that its belated supplemental notice of
13 appeal referencing the fees order should relate back to the date
14 of the filing of its appeal from the claim disallowance order.
15 We disagree. The above-cited Ninth Circuit decisions stand for
16 the proposition that a **timely** supplemental notice of appeal must
17 be filed from a post-judgment fees order.

18 Because Reliance's appeal of the fees order was untimely, we
19 lack jurisdiction to review the bankruptcy court's fees order.

20 **B. Mootness Issue re Claim Disallowance Order**

21 An appeal is constitutionally moot if it has become
22 impossible for the appellate court to fashion meaningful relief.
23 Ederel Sport, Inc. v. Gotcha Int'l L.P. (In re Gotcha Int'l
24 L.P.), 311 B.R. 250, 254 (9th Cir. BAP 2004) (citing Church of
25 Scientology of Cal. v. United States, 506 U.S. 9, 12 (1992)).

26 Here, after Reliance appealed the claim disallowance order,
27 the bankruptcy court entered an order granting Locklin's request
28 to dismiss her bankruptcy case. The case dismissal order has not

1 been appealed, and its entry raises the question of whether this
2 appeal has been rendered moot. See Omoto v. Ruggera
3 (In re Omoto), 85 B.R. 98, 100 (9th Cir. BAP 1988) ("The general
4 rule, when an underlying bankruptcy case is dismissed, is that it
5 'may indicate that no case or controversy remains with respect to
6 issues directly involving the reorganization of the estate.'").

7 While the dismissal of the underlying bankruptcy case
8 sometimes renders moot a pending appeal arising from that case,
9 that is not what happened here. The bankruptcy court's dismissal
10 order explicitly stated that both its claim disallowance order
11 and its fees order would remain effective notwithstanding the
12 dismissal of Locklin's bankruptcy case. The case dismissal order
13 also provided for the bankruptcy court's post-dismissal retention
14 of jurisdiction in the event that any of the matters taken up on
15 appeal were remanded for further proceedings. Most importantly,
16 the case dismissal order contemplated the payment in full of all
17 allowed general unsecured claims, which in light of our ruling in
18 this appeal conceivably could eventually include Reliance's
19 claim. Under these circumstances, the appeal from the claim
20 disallowance order is not moot.

21 **C. Substantive Review of Claim Disallowance Order**

22 "The filing of an objection to a proof of claim 'creates a
23 dispute which is a contested matter' within the meaning of
24 Bankruptcy Rule 9014 and must be resolved after notice and
25 opportunity for hearing upon a motion for relief." Lundell v.
26 Anchor Const. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir.
27 2000) (quoting Adv. Comm. Notes accompanying Rule 9014). As
28 amended in 2002, Rule 9014 generally requires bankruptcy courts

1 to resolve contested matters only after holding an evidentiary
2 hearing at which the testimony of witnesses is taken in the same
3 manner as it is in adversary proceedings. See Rule 9014(d) and
4 accompanying Adv. Comm. Note. There are two exceptions to this
5 rule: (1) the court may, if the parties so stipulate, decide the
6 contested matter based on the parties's affidavits and exhibits;
7 and (2) the court may dispense with the evidentiary hearing
8 requirement when there are no "disputed material factual issues"
9 presented. Id.; see also Caviata Attached Homes, LLC v. U.S.
10 Bank, N.A. (In re Caviata Attached Homes, LLC), 481 B.R. 34, 44
11 (9th Cir. BAP 2012). Put another way, "Where the . . . core
12 facts are not disputed, the bankruptcy court is authorized to
13 determine contested matters . . . on the pleadings and arguments
14 of the parties, drawing necessary inferences from the record."
15 In re Caviata Attached Homes, LLC, 481 B.R. at 45-46 (quoting
16 In re Nicholson, 435 B.R. at 636).

17 Here, the bankruptcy court noted the alter ego allegations
18 set forth in the amended proof of claim and acknowledged
19 Reliance's request for the court to set an evidentiary hearing.
20 But the court declined to do so. No evidentiary hearing was
21 necessary, the court reasoned, because Reliance had not included
22 with its written claim objection response any declarations or
23 exhibits tending to demonstrate that Locklin was Nightscaping's
24 alter ego. Consequently, the court ruled, the alter ego issue
25 was not a disputed material factual issue for purposes of
26 Rule 9014(d) because the only evidence before the court -
27 Locklin's evidence - tended to demonstrate that Locklin was not
28 Nightscaping's alter ego.

1 We cannot uphold this ruling of the bankruptcy court. The
2 alter ego allegations in the amended proof of claim constituted
3 "some evidence" in support of Reliance's alter ego theory.
4 Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991)
5 (citing 3 L. King, Collier on Bankruptcy § 502.02, at 502-22
6 (15th ed. 1991)). Indeed, the bankruptcy court acknowledged the
7 prima facie validity of Reliance's amended proof of claim based
8 on its alter ego theory. This acknowledgment is consistent with
9 the Federal Rules of Bankruptcy Procedure and Ninth Circuit
10 authority. Rule 3001(f) provides that "A proof of claim executed
11 and filed in accordance with these rules shall constitute prima
12 facie evidence of the validity and amount of the claim." And our
13 Court of Appeals has held that the **allegations** set forth in a
14 properly-filed proof of claim constitute prima facie evidence for
15 purposes of ruling on a claim objection. Lundell, 223 F.3d at
16 1040 ("Claimants alleged in their proofs of claim that Lundell
17 was a West Coast general partner, which is prima facie valid.").

18 In Lundell, the bankruptcy court weighed the evidence at an
19 evidentiary hearing at which both sides presented evidence in
20 support of their respective positions. Id. at 1037. Here, in
21 contrast, the bankruptcy court refused to hold an evidentiary
22 hearing. While the bankruptcy court here concluded that there
23 was no factual dispute - no conflicting evidence - for which it
24 needed to hold an evidentiary hearing, this conclusion was
25 incorrect. The bankruptcy court here weighed the evidence
26 presented by both sides and determined that Reliance's alter ego
27 evidence was de minimis and Locklin's contrary evidence was
28 credible. These two determinations constituted the resolution of

1 a material factual dispute, which the bankruptcy court only
2 should have resolved after holding an evidentiary hearing, per
3 Rule 9014(d).

4 According to the bankruptcy court, its local rules - namely
5 C.D. Cal. L. Bankr. R. 9013-1(f) and (i) - required Reliance to
6 include with its written response to the Second Claim Objection
7 the evidence it wished to submit on the alter ego issue. Having
8 not done so, the court ruled, Reliance failed to meet its burden
9 to demonstrate the existence of a disputed material factual issue
10 requiring an evidentiary hearing. As the bankruptcy court
11 explained to Reliance at oral argument:

12 I think your burden in your response was to present
13 evidence, and I'll turn back to other local bankruptcy
14 rules. 9013-1(f) and (i) both require as part of an
15 opposition that you include evidence as well as the
16 legal argument on which you base your opposition for,
17 among other things, due process concerns.

18 Ultimately, that wasn't done in any respect. And so I
19 think in terms of the shifting of the burdens with
20 respect to a claim objection, you, sir, you failed to
21 satisfy your burden, the Claimant's ultimate burden of
22 persuasion, by presenting evidence as part of your
23 response to raise an issue of fact in part, because
24 there is no evidence presented with your initial
25 claim. So there's no evidence at all supporting your
26 assertions that Ms. Locklin is the alter ego of
27 Nightscaping.

28 Hr'g Tr. (Aug. 19, 2014) at 5:21-6:9.

29 The manner in which the bankruptcy court applied its local
30 rules shifted the timing and manner of presenting evidence from
31 an evidentiary hearing to the briefing portion of the claim
32 objection proceedings. In this sense, the bankruptcy court's
33 application of its local rules impermissibly contravened the
34 Federal Rules of Bankruptcy Procedure by altering the procedural
35 scheme for resolving claim objections set forth in Rule 9014(d).

1 See Rule 9029(a)(1) (authorizing courts to promulgate local rules
2 only to the extent they are consistent with the Federal Rules of
3 Bankruptcy Procedure); see also Garner v. Shier (In re Garner),
4 246 B.R. 617, 624 (9th Cir. BAP 2000) (citing Rule 9029(a)(1) and
5 noting that local rules must be consistent with the Federal Rules
6 of Bankruptcy Procedure).⁴

7 In addition, by weighing the evidence presented by both
8 sides and finding for Locklin on the alter ego issue, the
9 bankruptcy court conflated its initial duty to ascertain whether
10 there existed a disputed material factual issue with its ultimate
11 duty to resolve factual disputes by weighing the evidence.
12 Consequently, the bankruptcy court committed reversible error
13 when it disallowed Reliance's claim without holding an
14 evidentiary hearing.

15 It also is worth noting that the bankruptcy court was
16 insistent that its ruling did not amount to a grant of summary
17 judgment. Summary judgment procedures are available in
18 bankruptcy court contested matters, see Rule 9014(c)
19

20
21 ⁴In In re Garner, this panel upheld the validity of a local
22 rule requiring those objecting to proofs of claim to submit with
23 their claims objections evidence sufficient to overcome the prima
24 facie validity of a properly-filed proof of claim. In relevant
25 part, In re Garner held that this local rule was consistent with
26 Rules 3007 and 9014. We need not further address In re Garner
27 because it dealt with the requirements for claims objections and
28 not, as implicated here, the requirements for responses to claims
objections. However, we do note that In re Garner was decided
before Rule 9014 was amended in 2002 to require evidentiary
hearings in contested matters and that some of In re Garner's
reasoning depended on the bankruptcy court's discretion, before
the 2002 amendments, to decide disputed material factual issues
on affidavits. See In re Garner, 246 B.R. at 623-24.

1 (incorporating Civil Rule 56), and the bankruptcy court here
2 could have sua sponte invoked the summary judgment process if it
3 believed, based on the parties' papers, that the claim objection
4 presented no genuinely disputed issues of material fact. See
5 Norse v. City of Santa Cruz, 629 F.3d 966, 971-72 (9th Cir.
6 2010).

7 However, before sua sponte granting summary judgment, courts
8 first must give the adverse party adequate opportunity to avail
9 itself of summary judgment procedures, which are designed to
10 flesh out whether a genuinely disputed issue of material fact
11 exists. Id. Here, the evidentiary record presented at the
12 initial hearing on Locklin's Second Claim Objection arguably
13 suggested that there was no "genuine" issue of material fact
14 within the meaning of seminal summary judgment decisions like
15 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986).
16 Regardless, Reliance was not given adequate notice and
17 opportunity to avail itself of summary judgment procedures
18 designed to test this notion.

19 Nothing in our decision should be construed to suggest that
20 the bankruptcy court is obliged on remand to give Reliance more
21 time to conduct discovery. Reliance's opening appeal brief
22 mentions discovery only once, and then only in passing. As a
23 result, Reliance has forfeited the issue of whether the
24 bankruptcy court erred by not giving it more time to conduct
25 discovery. See Christian Legal Soc'y v. Wu, 626 F.3d 483, 487-88
26 (9th Cir. 2010); Brownfield v. City of Yakima, 612 F.3d 1140,
27 1149 n.4 (9th Cir. 2010).

28 Moreover, even if Reliance had properly preserved for appeal

1 the discovery issue, the record reflects that Reliance had ample
2 time to conduct discovery. As early as September 2013, when
3 Reliance filed a state court complaint against both Locklin and
4 Nightscaping, Reliance already had stated that the basis of its
5 claim against Locklin arose from alter ego principles. See
6 Complaint (Sept. 11, 2013) - attached as Exhibit 3 to Reliance's
7 June 10, 2014 amended proof of claim ("LaVesta Locklin is liable
8 for the debt pursuant to the doctrine of alter ego."). Thus, at
9 the time it filed its initial proof of claim in February 2014,
10 Reliance already knew that its claim against Locklin ultimately
11 depended on it being able to prove that Locklin was
12 Nightscaping's alter ego. This need to prove its alter ego
13 allegations was further driven home when Locklin filed her first
14 claim objection in March 2014 and when the court sustained the
15 first claim objection in June 2014 (with leave to amend). Yet
16 there is nothing in the record indicating that Reliance made any
17 effort to conduct discovery at any time during the claim
18 proceedings - from the February 2014 filing of its original proof
19 of claim to the August 2014 entry of the order disallowing its
20 amended proof of claim. Nor is there anything in the record
21 indicating any legitimate reason why Reliance was unable to
22 conduct the requisite discovery while its bankruptcy claim
23 against Locklin was pending.

24 Finally, at the end of its opening brief, Reliance requested
25 that this panel order that the dispute between the parties, on
26 remand, be reassigned to another bankruptcy judge. We deny that
27 request. Reliance did not attempt to explain why it believes
28 reassignment is necessary. Furthermore, if Reliance believes

1 that reassignment is justified based on some particular conduct
2 of the bankruptcy court, Reliance in the first instance should
3 have filed a motion for recusal in the bankruptcy court and
4 should have followed all applicable procedural rules for
5 requesting such relief. See generally United States v. Studley,
6 783 F.2d 934, 939-40 (9th Cir. 1986).⁵

7 **CONCLUSION**

8 For the reasons set forth above, we VACATE the bankruptcy
9 court's claim disallowance order, and we REMAND for further
10 proceedings consistent with this decision.

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23 ⁵On appeal, after we set this matter for oral argument,
24 Reliance filed a motion to continue oral argument, which we
25 denied. Reliance then filed additional requests for relief
26 regarding oral argument and attempted to support these requests
27 with a request for judicial notice. We addressed all of these
28 requests in our decision disposing of Reliance's and Opperwall's
companion appeal (BAP No. CC-15-1008-KuFKI), and we deny those
requests for purposes of this appeal for the same reasons as
stated therein.